IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6716 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKORBHAI C PADHIYAR - Petitioner(s)

Versus

FAG PRECESSION BEARING LTD. - Respondent(s)

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Appearance :

MR NILESH M SHAH for Petitioner(s) : 1,MR MAYANK DESAI for Petitioner(s) : 1,
NANAVATI ASSOCIATES for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 12/01/2006

CAV JUDGMENT

1.By filing this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for quashing and setting aside the order passed by the

Industrial Tribunal, Vadodara dated 8.8.1996 in Approval Application (IT) No. 37 of 1995 in Reference (IT) No. 81 of 1987, by which the Industrial Tribunal, Vadodara allowed the Approval Application filed by the respondent herein.

2. It is the case of the petitioner that the petitioner was suspended on 4.2.1994 pending inquiry on allegations of theft. The respondent – company, vide order dated 20.05.1995 dismissed the petitioner with effect from 4.2.1994. The respondent – company also applied under Section 33 of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act” for short) for approval of the dismissal. It also appears from the record that in the meantime, the petitioner initiated the conciliation proceedings under Section 10(1) of the Act and on failure of the same, the reference was made before the Labour Court, Vadodara. The said reference is pending before the Labour Court, Vadodara. Ultimately, the learned Tribunal, by its order dated 8.8.1996, allowed the Approval Application (IT) No.37 of 1995 in Reference (IT) No. 81 of 1987.

3. Being aggrieved and dissatisfied by the order dated 8.8.1996 passed by the Industrial Tribunal, Vadodara in Approval Application (IT) No.37 of 1995 in Reference (IT) No. 81 of 1987, the petitioner has preferred this

petition under Article 226/227 of the Constitution of India for quashing and setting aside the same.

4. Heard the learned advocates for the parties and perused the material placed on record.

5. It can be noticed from the record that the petitioner – workman was suspended on 4.2.1994 pending inquiry on allegation of theft. It is not in dispute that the reference is pending before the Labour Court at Vadodara under Section 10(1) of the Act between the petitioner and the respondent. The respondent, by order dated 20.5.1995, dismissed the petitioner – workman and on dismissing him, immediately preferred the application under Section 33(2)(b) of the Act which gives right to the employer to seek approval from the Tribunal of the Labour Court for any action of dismissal / discharge of the concerned workman even if the reference is pending when the workman is guilty of any misconduct as per the standing order or the contract of service. Section 33(2) reads as under :

> “33. Conditions of service etc., to remain unchanged under certain circumstances during pendency of proceedings -
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> (1) xxx
>
> (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer

may, in accordance with the standing orders applicable to a workman concerned in such dispute [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman], -

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding ; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman :

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

6. Therefore, it can be seen from the aforesaid provisions of Section 33(2) that during the pendency of any such proceedings in respect of an industrial dispute, the employer may dismiss the workman in accordance with the standing orders applicable to a workman concerned in

such dispute. Nowhere in the section, it is provided that the respondent – workman may be dismissed with retrospective effect.

7. Mr.N.M.Shah, learned advocate appearing for the petitioner has submitted that the issue is whether the Tribunal is empowered to look back into the period before the approval application has been made and approve the change in relationship between employee and employer from the date prior to the application. He submitted that the Tribunal is not vested with the power to go back to an earlier date and approve the action of the employer from that date when the application has been made much later on and during the period in question. In support of his submission, Mr.Shah has relied upon the decision of Kerala High Court in the case of C.I.Poulose s/o Ittiavirah Cherupurath V/s The President, Pindimana Service Cooperative Bank Ltd., and Anr., reported in 1996 LLR 603 and has submitted that there cannot be retrospective dismissal unless the standing orders or rules otherwise provide. In the case of C.I.Poulose (supra), the Division Bench of the Kerala High Court has observed in para 11 as under :

> “11. Before parting with the case we may observe that in industrial law, it is well settled that

unless the standing orders or rules otherwise provide, punishment of dismissal cannot be imposed retrospectively but can be effective only prospectively, i.e., from the date of dismissal order. In other words, a workman cannot be dismissed retrospectively. However, such dismissal will not be invalid, but it will be effective only from the date of dismissal. That is, if the dismissal order is otherwise valid the mere retrospectiveness could not make the order invalid in its entirety. Dismissal will be effective from the date of the order. In this case, petitioner was suspended on 9.9.1974 and he was dismissed without conducting enquiry on 24.1.1975. Thereafter dismissal was withdrawn and he was again suspended pending enquiry on 29.3.1975 and dismissed by order dated 15.9.1975 effectively from 9.9.1974, the date of first suspension. Since a person cannot be dismissed retrospectively, petitioner's dismissal is only valid from 15.9.1975, the effective date of dismissal. His first dismissal on 24.1.1975 was set aside by the management itself and he was reinstated. He was again, suspended pending enquiry on 29.3.1975. Therefore, he is entitled

to full salary for the period from 9.9.1974 to 29.3.1975. He was suspended pending enquiry on 29.3.1975 and he was dismissed by order dated 15.9.1975. Therefore, he is entitled to the applicable subsistence allowance during the above period. Therefore, we direct that full salary for the period from 9.9.1974 to 29.3.1975 and subsistence allowance for the period from 29.3.1975 to 15.9.1975 may be paid to the petitioner after deducting any salary or subsistence allowance paid during that period. We also direct that the above amount should be paid within three months from the date of receipt of a copy of this judgment and it will carry interest at the rate of 10% from the date of dismissal i.e., 15.9.1975 till date of punishment.

The original petition is dismissed but with a direction to the first respondent to pay full wages to the petitioner for the period from 9.9.1974 to 29.3.1975 and subsistence allowance for the period from 29.3.1975 to 15.9.1975, after deducting any salary or subsistence allowance paid for the above period, with interest at the rate of 10% from 15.9.1975 till date of payment."

8.On the other hand, it is the contention of Mr.Nanavaty

that the petitioner – workman was placed under suspension from 4.2.1994 pending inquiry on serious and grave allegations of theft of component parts manufactured by the respondent company. Ultimately, after holding the inquiry wherein the Inquiry Officer has come to the conclusion that the petitioner was guilty of the offence contained in the chargesheet and after having issued the show cause notice on 8.2.1995, the petitioner – workman has been dismissed from service by order dated 20.5.1995. He submitted that upon bare perusal of Section 33(2), it would be apparently clear that the respondent – company has acted within legal boundaries and that learned Tribunal has passed its order on a true and correct interpretation of the aforesaid section. In support of his submission, Mr.Nanavaty has relied upon the decision of the Hon'ble Apex Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., V/s Shri Ram Gopal Sharma and others, reported in AIR 2002 SC 643, the decision in the case of Lalla Ram V/s D.C.M., Chemical Works Ltd., and another, reported in (1978) 3 SCC 1 and the decision in the case of The Gujarat Mineral Development Corporation V/s Shri P.H.Brahmbhatt, reported in (1974) 3 SCC 601.

9.It is required to be noted that it is by now well

settled that unless the standing orders or rules otherwise provide, punishment of dismissal cannot be imposed retrospectively but can be effective only prospectively i.e., from the date of dismissal order. In other words, the workman cannot be dismissed retrospectively. However, said dismissal will not be invalid but it will be effective only from the date of dismissal. Admittedly, in the present case, the petitioner was placed under suspension on 4.2.94 and thereafter he was dismissed vide order dated 20.5.1995. I am of the considered opinion that the Industrial Tribunal has committed an error while allowing the application filed by the respondent company being Approval Application (IT) No.37 of 1995.

10.Under the circumstances, the order passed by the Industrial Tribunal dated 8.8.1996 in Approval Application (IT) No. 37 of 1995 in Reference (IT) No. 81 of 1987 is required to be quashed and set aside. Accordingly, the petition is allowed. The impugned order dated 8.8.1996 passed by the Industrial Tribunal in Approval Application (IT) No. 37 of 1995 in Reference (IT) No. 81 of 1987 is quashed and set aside. It is required to be noted that the dismissal of the petitioner – workman will not be invalid but it will be effective only from the date of dismissal. Rule is made

absolute to the aforesaid extent. No costs.

(SHARAD D DAVE, J)

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